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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,629	11/20/2001	Ciaran Bolger	08019.0001-00000	8916
7590	03/12/2004		EXAMINER	
Finnegan Henderson, Farabow Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			DAHBOUR, FADI H	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/988,629	BOLGER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Fadi H. Dahbour	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-63 are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*PCU RLL*

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-40, 46, 48-56, 58, 61-62, drawn to a monitoring system, classified in class 351, subclass 209.
  - II. Claims 41-45, 47, 57, 59-60, 63, drawn to a method of monitoring, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another materially different apparatus such as one that does not require a processor.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species of the claimed invention. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for

prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6, 10, 12, 15, 20-21, 23-25, 29, 35, 37, 41-51, 56-63 are generic:

Group 1: claim 16, wherein the filter reduces power supply signal interference.

Group 2: claims 17-19, wherein the filter reduces seismic event effects.

Group 3: claim 5, wherein the filter filters microsaccade.

Group 4: claim 4, wherein the filter selects an eye tremor signal window.

Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species from the following patentably distinct species of the claimed invention, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6, 10, 12, 15, 20-21, 23-25, 29, 35, 37, 41-51, 56-63 are generic:

Group 5: claims 7, 13, 22, wherein the transmitter transmits an eye tremor signal.

Group 6: claim 11, 14, wherein the transmitter transmits a control signal.

Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species from the following patentably distinct species of the claimed invention, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6, 10, 12, 15, 20-21, 23-25, 29, 35, 37, 41-51, 56-63 are generic:

Group 7: claim 8, wherein the controller signal controls medication dosage.

Group 8: claim 9, wherein the controller signal controls a monitoring device.

Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species from the following patentably distinct species of the claimed invention, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6, 10, 12, 15, 20-21, 23-25, 29, 35, 37, 41-51, 56-63 are generic:

Group 9: claim 26, wherein the classifier determines depth of anesthesia.

Group 10: claims 27, 34, wherein the classifier determines depth of coma.

Group 11: claim 36, wherein the classifier determines brain stem viability.

Group 12: claim 38, wherein the classifier determines sleep pattern.

Group 13: claim 39, wherein the classifier determines combat readiness.

Group 14: claim 40, wherein the classifier determines transitions between consciousness & unconsciousness.

Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species from the following patentably distinct species of the claimed invention, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6, 10, 12, 15, 20-21, 23-25, 29, 35, 37, 41-51, 56-63 are generic:

Group 15: claims 30-31, wherein the reference value is determined from an electroencephalogram monitor.

Group 16: claim 32, wherein the reference value is determined from an electroencephalogram index.

Group 17: claim 33, wherein the reference value is determined from auditory evoked potential.

Group 18: claim 28, wherein the reference value is determined from the received eye tremor signal.

Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species from the following patentably distinct species of the claimed invention, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6, 10, 12, 15, 20-21, 23-25, 29, 35, 37, 41-51, 56-63 are generic:

Group 19: claims 52-53, wherein the classifier classifies Parkinson's disease.

Group 20: claim 54, wherein the classifier classifies multiple sclerosis.

Group 21: claim 55, wherein the classifier classifies oculomotor palsy.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 703-306-5479.

The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fadi H. Dahbour  
Examiner  
Art Unit 3743